

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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REPORT & RECOMMENDATION

Before the court is plaintiff's second "Petition for Review" (#5), which is plaintiff's response to this court's order dismissing without prejudice plaintiff's first "Petition for Review" (#1).

BACKGROUND

This case is plaintiff Steven Crain's second attempt to file a case against the named defendants in federal court. Crain previously filed a complaint against defendants on June 24, 2008. *See* 2:08-cv-00818-KJD-PAL. On November 26, 2008, the Honorable Kent J. Dawson, U.S. District Judge, entered judgment in favor of all defendants and against Crain in that case. Order (#44). Crain immediately appealed the order to the Ninth Circuit Court of Appeals, which treated the appeal as a writ of mandamus and summarily dismissed the petition on January 22, 2009. Order (#52). Shortly thereafter, on February 11, 2009, Crain initiated the case now before the court against many of the same defendants – some of whom had been dismissed from the earlier action before judgment was entered.

Upon review of plaintiff's first "Petition for Review (#1) in this case, it was unclear whether plaintiff intended to file a habeas corpus petition pursuant to 28 U.S.C. § 2242 or a complaint pursuant to the Federal Rules of Civil Procedure. Order (#4). Accordingly, plaintiff's "Petition for Review" (#1)

1 was dismissed without prejudice to cure the deficiencies in his petition and refile it; specifically, the
2 court noted that plaintiff “fail[ed] to articulate the relief sought and the legal grounds in support
3 thereof.” Plaintiff was ordered to file either a habeas corpus petition or a complaint by June 19, 2009.
4 The court warned that failure to do so may result in plaintiff’s case being dismissed.

5 **DISCUSSION**

6 To date, plaintiff has filed neither a habeas petition nor an amended complaint. Instead he filed
7 another “Petition for Review.” While the second “Petition” (#5) conveys Crain’s deep dismay and
8 disappointment with the court – particularly with this court’s order to dismiss without prejudice – the
9 filing is not responsive to this court’s Order (#4). Rather, in expressing his ire with the court, Crain
10 makes fresh allegations against an entirely different set of individuals than the defendants named in the
11 caption. The second Petition (#5) doesn’t address, much less cure, the deficiencies in the first Petition
12 (#1), nor does it even relate to the substance of the first Petition (#1).

13 **RECOMMENDATION**

14 Based on the foregoing, it is the recommendation of the undersigned United States Magistrate
15 Judge that Steven Crain’s Case No. 09-cv-00283-RCJ-LRL be dismissed with prejudice for failure to
16 state a cognizable claim.

17 DATED this 9th day of November, 2009.

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LAWRENCE R. LEAVITT
UNITED STATES MAGISTRATE JUDGE

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